

ORDINANCE NO. 12-20

ORDINANCE GRANTING A VARIANCE PERMIT TO ALLOW A DISTANCE OF 1,150 FEET FROM AN EXISTING SECONDHAND DEALER, WHERE A 2,500-FOOT DISTANCE RADIUS IS REQUIRED, CONTRA TO HIALEAH CODE §§ 98-1111(21). **PROPERTY LOCATED AT 1738-2 WEST 49 STREET, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of March 14, 2012 recommended approval of this ordinance; and

WHEREAS, the applicant proffered a Declaration of Restrictive Covenants limiting secondhand transactions to jewelry items only, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The below-described property is hereby granted a variance permit to allow a distance of 1,150 feet from an existing secondhand dealer, where a 2,500 foot distance radius is required, contra to Hialeah Code §98-1111(21), which provides in pertinent part: “Secondhand (merchandise) dealers and precious metals dealers – Distance separation requirements. Where either a secondhand (merchandise) dealer, as defined in article VIII of chapter 18, or precious metals dealer, as defined in article VII of chapter 18, is a permitted use, it shall not be located within a 2,500-foot radius of any other secondhand (merchandise) dealer or precious metal dealer use.” Property located at

1738-2 West 49 Street, Hialeah, Miami-Dade County, Florida, zoned C-2 (Liberal Retail

Commercial District), and legally described as follows:

COMMENCE AT A POINT ON THE EAST LINE OF THE NW $\frac{1}{4}$ OF SECTION 2, TOWNSHIP 53 SOUTH, RANGE 40 EAST, MIAMI-DADE COUNTY, FLORIDA, SAID POINT BEING 1207.23 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTH LINE OF THE NW $\frac{1}{4}$ OF SAID SECTION 2, AND ALSO BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF NW 103 STREET (WEST 49 STREET) AS SHOWN ON THE RIGHT OF WAY MAP THEREOF, RECORDED IN PLAT BOOK 83 AT PAGE 20 OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY FLORIDA; THENCE RUN S895941W ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID NW 103 STREET (WEST 49 STREET) FOR A DISTANCE OF 35.01 FEET TO A POINT 35 FEET WEST OF, AS MEASURED AT RIGHT ANGLES TO, THE EAST LINE OF THE NW $\frac{1}{4}$ OF SAID SECTION 2, SAID POINT BEING A POINT ON THE WEST RIGHT OF WAY LINE OF NW 72 AVENUE (WEST 16 AVENUE) AND SAID POINT ALSO BEING THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED; THENCE RUN S12410E ALONG A LINE PARALLEL TO THE EAST LINE OF THE NW $\frac{1}{4}$ OF SAID SECTION 2 AND BEING ALONG THE WEST RIGHT-OF-WAY LINE OF SAID WEST 16 AVENUE FOR A DISTANCE OF 900 FEET TO A POINT; THENCE RUN S895941W ALONG A LINE PARALLEL TO THE SOUTH RIGHT-OF-WAY LINE OF SAID NW 103 STREET (WEST 49 STREET), THE SAME BEING ALONG A LINE PARALLEL TO THE NORTH LINE OF THE NW $\frac{1}{4}$ OF SAID SECTION 2, FOR A DISTANCE OF 900 FEET TO A POINT; THENCE RUN N12410W ALONG A LINE PARALLEL TO THE EAST LINE OF THE NW $\frac{1}{4}$ OF SAID SECTION 2; THE SAME BEING ALONG THE WEST RIGHT-OF-WAY LINE OF SAID WEST 16 AVENUE FOR A DISTANCE OF 900 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF SAID NW 103 STREET (WEST 49 STREET), SAID POINT BEING 1207.23 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO THE NORTH

LINE OF THE NW ¼ OF SAID SECTION 2; THENCE RUN N895941E THE SOUTH RIGHT-OF-WAY LINE OF SAID NW 103 STREET (WEST 49 STREET) AND BEING ALONG A LINE PARALLEL TO THE NORTH LINE OF THE NW ¼ OF SAID SECTION 2 FOR A DISTANCE OF 900 FEET TO THE POINT OF BEGINNING.

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 5: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.


PASSED and ADOPTED this 10th day of April, 2012.



Isis Garcia-Martinez
Council President

Attest:

Approved on this 10 day of April, 2012.



David Concepcion, City Clerk



Mayor Carlos Hernandez

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

SALEBLEGSLATION\2012-ORDINANCES\1738-2West49Street-distfromexist2nddealeruse-MAR14.doc

Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".



CFN 2012R0275526
DR Bk 28077 Pgs 4487 - 4494; (8pgs)
RECORDED 04/18/2012 15:57:15
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Prepared by and return to:
City of Hialeah
Planning Division
501 Palm Avenue, Second Floor
Hialeah, FL 33010

**DECLARATION OF RESTRICTIVE COVENANTS
RE PORTION OF SHOPPING CENTER**

I, **FREDRIC N. KARLTON**, as a duly authorized officer on behalf of 49th St. Capital, Corp., a Florida corporation, as general partner of and intending to legally bind **HIALEAH FEE COMMONS, LTD**, a Florida limited partnership ("Declarant"), the owner of lands described in the attached "**Exhibit A**" more commonly referred to as the Westland Commons Shopping Center (the "Shopping Center")

The street address for the ONLY Premises affected by this Declaration of Restrictive Covenants is 1738 West 49 Street, Unit #2; Hialeah, Florida 33012 (the "Premises"), which Premises is currently occupied by **Luany Jewelers VI, Inc.**, a Florida Corporation (the "Tenant").

The Premises is located within the Shopping Center. The folio number of the Shopping Center containing the Premises is 04-3002-000-0032

make the following Declaration of Restrictive Covenants covering and running ONLY with the above Premises, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real Property described above, in favor of and enforceable by the City of Hialeah, Florida. The undersigned makes these covenants ONLY in connection with the operation of a jewelry store at the above described Premises location.

In connection therewith, the undersigned covenants, represents and agrees as follows that ONLY with respect to the above Premises:

1. The only secondhand goods permitted to be purchased, traded or consigned at the Premises shall be used or previously owned items of jewelry.
2. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described Premises and shall constitute a covenant running with the land and may be recorded in

1

Declaration of Restrictive Covenants v5.doc

4/10/2012

0

8

the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its (their) heirs, successors and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in Hialeah Charter.

3. Where construction has occurred on said Premises described herein, pursuant to a permit issued by the City of Hialeah, and inspection made and approval of occupancy given by the City, the same shall create a conclusive presumption that the improvements thus constructed comply with the intent and spirit of the restrictions referenced herein and this Declaration of Restrictive Covenants shall not be construed as clouding title of any of said property on which such development has occurred.

4. Anything contained in this Declaration to the contrary notwithstanding:

- a. Declarant does not by this Declaration intend to restrict nor burden the entire Shopping Center owned by Declarant, but rather ONLY the Premises. This Declaration is ONLY intended to affect and be a restriction on the specific Premises listed above.
- b. It is clarified that nothing in this Declaration is intended to be an encumbrance nor restriction on any other property owned by Declarant other than the Premises occupied by Tenant, including, without limitation, any other premises or portion of the Shopping Center nor stores or parcels of land located within the Shopping Center whatsoever, and the purpose of the legal description of the Shopping Center attached hereto is merely to index this Declaration in the Public Records.
- c. Anything contained in this Declaration to the contrary notwithstanding, including, without limitation, Section 2 above, in the event of a termination or expiration of the Lease with Tenant for such Premises, Declarant or the then owner having fee simple title to the Premises, may at its election, but shall not be obligated to, unilaterally file a Notice of Termination of Lease and Declaration in the Public Records referencing this recorded Declaration and describing the termination of the Lease of the Premises with the Tenant, and without the necessity of the joinder or resolution of the City Council nor the Mayor of the City of Hialeah, in which event this Declaration shall be deemed to be automatically null and void and no longer a Restriction on the Premises nor any portion of the Shopping Center.

[This space left intentionally blank]



**IN WITNESS WHEREOF DECLARANT
HAS SIGNED THIS DECLARATION
AS OF THE DATE INDICATED ABOVE**

Signed, sealed and delivered
in the presence of:

Ann Modesitt
witness

Print
Name: Ann Modesitt
Natalie Ochoa
witness

Print
Name: Natalie Ochoa

DECLARANT

**HIALEAH FEE COMMONS,
LTD.,**
a Florida limited partnership

By: 49TH STREET CAPITAL CORP.,
a Florida corporation, General Partner

By: [Signature]
Fredric N. Karlton, President

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

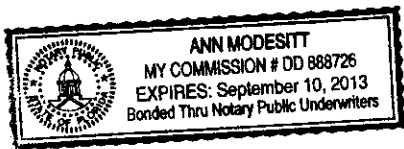
The foregoing instrument was acknowledged before me this 10 day of April 2012, by Fredric N. Karlton as President of 49TH STREET CAPITAL CORP., a Florida corporation, General Partner of HIALEAH FEE COMMONS, LTD., a Florida limited partnership. He is personally known to me or produced a State of Florida driver's license as identification.

Sign Name: Ann Modesitt

Print Name: Ann Modesitt
NOTARY PUBLIC

Serial No(none, if blank): _____

My Commission Expires: Sept. 10, 2013



[NOTARIAL SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION OF SHOPPING CENTER
CONTAINING THE PREMISES

All that certain parcel of land situated in the County of Dade and State of Florida, described as follows:

Commence at a point on the East line of the NW $\frac{1}{4}$ of Section 2, Township 53 South, Range 40 East, Dade County, Florida, said point being 1,207.23 feet South of, as measured at right angles to, the North line of the NW $\frac{1}{4}$ of said Section 2, and also being a point on the South right of way line of N. W. 103rd Street (West 49th Street) as the same is shown on the Right of Way Map thereof recorded in plat book 83 at page 20 of the public records of Dade County, Florida; thence run South 89 degrees 59 minutes 41 seconds West along the South right of way line of said N. W. 103rd Street (West 49th Street) for a distance of 35.01 feet to a point 35 feet West of, as measured at right angles to, the East line of the NW $\frac{1}{4}$ of said Section 2, said point being a point on the West right of way line of N. W. 72nd Avenue (West 16th Avenue—Hialeah numerical system) and said point also being the point of beginning of the tract of land herein described; thence run South 1 degree 24 minutes 10 seconds East along a line parallel to the East line of the NW $\frac{1}{4}$ of said Section 2 and being along the West right of way line of said N. W. 72nd Avenue (West 16th Avenue—Hialeah numerical system) for a distance of 900 feet to a point; thence run South 89 degrees 59 minutes 41 seconds West along a line parallel to the South right of way line of said N. W. 103rd Street (West 49th Street), the same being along a line parallel to the North line of the NW $\frac{1}{4}$ of said Section 2, for a distance of 900 feet to a point; thence run North 1 degree 24 minutes 10 seconds West along a line parallel to the East line of the NW $\frac{1}{4}$ of said Section 2, the same being along a line parallel to the West right of way line of said N. W. 72nd Avenue (West 16th Avenue—Hialeah numerical system) for a distance of 900 feet to a point on the South right of way line of said N. W. 103rd Street (West 49th Street), said point being 1,207.23 feet South of, as measured at right angles to, the North line of the NW $\frac{1}{4}$ of said Section 2; thence run North 89 degrees 59 minutes 41 seconds East along the South right of way line of said N. W. 103rd Street (West 49th Street) and being along a line parallel to the North line of the NW $\frac{1}{4}$ of said Section 2 for a distance of 900 feet to the point of beginning, containing 809,759.07 square feet, more or less, or 18.58951 acres, more or less; LESS AND EXCEPTING the following described lands:

The West 30.00 feet of the East 934.73 feet of the South 899.73 feet of the North 2106.96 feet of the NW $\frac{1}{4}$ of Section 2, Township 53 South, Range 40 East, Dade County, Florida;

AND

All that part of the NW $\frac{1}{4}$ of said Section 2 which lies within the external area formed by a 25.00 foot radius arc concave to the Southeast, tangent to the West line of the East 904.73 feet of the NW $\frac{1}{4}$ of said Section 2, and tangent to the South line of the North 1207.23 feet of the NW $\frac{1}{4}$ of said Section 2;

AND

All that part of the NW $\frac{1}{4}$ of said Section 2 which lies within the external area formed by a 25.00 foot radius arc concave to the Northeast, tangent to the West line of the East 904.73 feet of the NW $\frac{1}{4}$ of said Section 2, and tangent to the South line of the North 2106.96 feet of the NW $\frac{1}{4}$ of said Section 2.

* * * * *

ORDINANCE NO. 12-20

ORDINANCE GRANTING A VARIANCE PERMIT TO ALLOW A DISTANCE OF 1,150 FEET FROM AN EXISTING SECONDHAND DEALER, WHERE A 2,500-FOOT DISTANCE RADIUS IS REQUIRED, CONTRA TO HIALEAH CODE §§ 98-1111(21). **PROPERTY LOCATED AT 1738-2 WEST 49 STREET, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of March 14, 2012 recommended approval of this ordinance; and

WHEREAS, the applicant proffered a Declaration of Restrictive Covenants limiting secondhand transactions to jewelry items only, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The below-described property is hereby granted a variance permit to allow a distance of 1,150 feet from an existing secondhand dealer, where a 2,500 foot distance radius is required, contra to Hialeah Code §98-1111(21), which provides in pertinent part: “Secondhand (merchandise) dealers and precious metals dealers – Distance separation requirements. Where either a secondhand (merchandise) dealer, as defined in article VIII of chapter 18, or precious metals dealer, as defined in article VII of chapter 18, is a permitted use, it shall not be located within a 2,500-foot radius of any other secondhand (merchandise) dealer or precious metal dealer use.” Property located at

1738-2 West 49 Street, Hialeah, Miami-Dade County, Florida, zoned C-2 (Liberal Retail Commercial District), and legally described as follows:

COMMENCE AT A POINT ON THE EAST LINE OF THE NW $\frac{1}{4}$ OF SECTION 2, TOWNSHIP 53 SOUTH, RANGE 40 EAST, MIAMI-DADE COUNTY, FLORIDA, SAID POINT BEING 1207.23 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTH LINE OF THE NW $\frac{1}{4}$ OF SAID SECTION 2, AND ALSO BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF NW 103 STREET (WEST 49 STREET) AS SHOWN ON THE RIGHT OF WAY MAP THEREOF, RECORDED IN PLAT BOOK 83 AT PAGE 20 OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY FLORIDA; THENCE RUN S895941W ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID NW 103 STREET (WEST 49 STREET) FOR A DISTANCE OF 35.01 FEET TO A POINT 35 FEET WEST OF, AS MEASURED AT RIGHT ANGLES TO, THE EAST LINE OF THE NW $\frac{1}{4}$ OF SAID SECTION 2, SAID POINT BEING A POINT ON THE WEST RIGHT OF WAY LINE OF NW 72 AVENUE (WEST 16 AVENUE) AND SAID POINT ALSO BEING THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED; THENCE RUN S12410E ALONG A LINE PARALLEL TO THE EAST LINE OF THE NW $\frac{1}{4}$ OF SAID SECTION 2 AND BEING ALONG THE WEST RIGHT-OF-WAY LINE OF SAID WEST 16 AVENUE FOR A DISTANCE OF 900 FEET TO A POINT; THENCE RUN S895941W ALONG A LINE PARALLEL TO THE SOUTH RIGHT-OF-WAY LINE OF SAID NW 103 STREET (WEST 49 STREET), THE SAME BEING ALONG A LINE PARALLEL TO THE NORTH LINE OF THE NW $\frac{1}{4}$ OF SAID SECTION 2, FOR A DISTANCE OF 900 FEET TO A POINT; THENCE RUN N12410W ALONG A LINE PARALLEL TO THE EAST LINE OF THE NW $\frac{1}{4}$ OF SAID SECTION 2; THE SAME BEING ALONG THE WEST RIGHT-OF-WAY LINE OF SAID WEST 16 AVENUE FOR A DISTANCE OF 900 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF SAID NW 103 STREET (WEST 49 STREET), SAID POINT BEING 1207.23 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO THE NORTH

LINE OF THE NW ¼ OF SAID SECTION 2; THENCE RUN N895941E THE SOUTH RIGHT-OF-WAY LINE OF SAID NW 103 STREET (WEST 49 STREET) AND BEING ALONG A LINE PARALLEL TO THE NORTH LINE OF THE NW ¼ OF SAID SECTION 2 FOR A DISTANCE OF 900 FEET TO THE POINT OF BEGINNING.

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 5: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.


PASSED and ADOPTED this 10th day of April, 2012.




Isis Garcia-Martinez
Council President

Attest:

Approved on this 10 day of April, 2012.



David Concepcion, City Clerk



Mayor Carlos Hernandez

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney